

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2802 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

TARLESHKUMAR P PATHAK

Versus

GUJARAT STATE CIVIL SUPPLIES CORP. LTD

Appearance:

MR NIKHIL KARIEL for Petitioners

MR KM PATEL for Respondent No. 1

None present for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/08/1999

ORAL JUDGEMENT

1. The petitioners, officers of the Gujarat State Civil Supplies Corporation Ltd., by this petition are praying for the following reliefs:

(A) declaring that the seniority list annexure 'D' dated 15-7-1985 is prepared on wrong basis and is illegal and quash and set aside the same;

- (B) declaring that the proper criterion for preparing the seniority list is the rank in the select/merit list and the seniority inter se between the direct recruits be fixed on that basis;
- (C) declaring that seniority list Annexure 'C' dated 5-11-84 prepared on the basis of the rank in the select/merit list is the proper and legal seniority list;
- (D) declaring that the petitioners are entitled to promotion to the post of Dy. Manager on the basis of their original merit number in the list prepared by the Selection Committee;
- (E) pending admission hearing and final disposal of this petition restrain the Corporation from operating the seniority list Ann. D. dated 15-7-1985 and further restraining the respondent Corporation from giving promotion to the post of Dy. Manager on the basis of the seniority list Ann. D. dated 15-7-85;
- (F) pending admission hearing and final disposal of this petition, direct the respondent Corporation by way of mandatory order to take into consideration the seniority list Ann. C dt. 5-11-84 for the purpose of giving promotion to the post of Dy. Manager and accordingly direct the respondent Corporation to promote the petitioners as and when their turn comes according to their number in the seniority list Ann. C. dated 5-11-84;
- (G) pass such other or further orders as may be deemed just and proper.

2. In case, the reliefs as prayed for are granted to the petitioners certainly it will upset the seniority list dated 15-7-85 and as a result thereof many of the persons who are shown senior to them may come below them in the list to be prepared. This final seniority list has been prepared and published on 15-7-85 and during this long period of 14 years there is all possibility that on the basis of that seniority list many of the persons would have been promoted to the next higher post.

3. Learned counsel for the respondent No.1 states that out of these four petitioners two have already been

promoted to the next higher post. If this is the fact, then certainly the persons who are shown senior to the petitioners in that final seniority list would have also been promoted to the next higher post. So this seniority list was operated, the promotions have been made and those persons have attained seniority accordingly in the next higher cadre on the basis of which they may be promoted now to the next higher post. The seniority list has been settled and now in case the relief as prayed for by the petitioners is granted behind the back of those persons who are likely to be affected in two ways by this decision in case it is given in favour of the petitioners, first that their position will be lowered in the seniority and second their promotions may also be disturbed, it cannot be permitted and more so where the petitioners themselves are responsible for the same.

4. This petition has been filed by the petitioners before this court on or about 13th May, 1986 i.e. within reasonable time of the publication of the final seniority list but none of the persons who is likely to be affected on grant of relief as prayed in this special civil application by this court in favour of the petitioners has been impleaded as party to it. Even if large number of persons who are likely to be affected by this decision may not be impleaded in individual capacity but at least some of them have to be impleaded in individual capacity. Learned counsel for the petitioners submit that it has been done by the petitioners by filing a civil application No. 8820/99 which has been granted by this court on 11-8-1999. By this civil application, I find that three persons were ordered to be joined as respondents but this court cannot be oblivious of the fact that this has been done after more than 13 years of the filing of the special civil application. Now the impleadment of these persons as party to the special civil application after 13 years of the filing of the special civil application and the final seniority list suffers from defect of delay and laches. Their position has been settled and what the petitioners now want to do by this petition to unsettle the same.

5. It is true that earlier seniority list has been prepared on the basis of the merit number in the selection given to the candidates. That seniority list has been changed and seniority has been fixed on the basis of joining on the post. I find sufficient merits in the contention of the learned counsel for the petitioners that the criterion for fixing of the seniority list should have been on merit number and not the date of joining. But this petition deserves to be

dismissed on two grounds. Firstly I find from the reply to the special civil application which fact has not been controverted, by the petitioners in rejoinder that the petitioners No.2,3 and 4 and the office bearers of the Union made a representation and on their representation, the earlier seniority list has been changed. The petitioners No.2, 4 and 5 are the office bearers of the Union, in the meeting of which it was decided and given to the Management to change the seniority list on the criterion of date of joining, are now estopped from challenging the seniority list prepared on the basis of the criterion as given out by the office bearers themselves. These averments made by the respondent No.1 in para-7 of the reply have not been controverted in the rejoinder. The petitioners filed the rejoinder to the reply filed by the respondents to the special civil application but the basic, important and substantial facts have not been controverted. I find sufficient merits in the contention of the learned counsel for the respondents that the petitioners No.2, 3 and 4 are estopped from challenging the seniority list.

6. It is true that the petitioner No.1 was not the party to the same but when he joined with persons who were party to the resolution passed by the Union on the basis of which this list has been changed he has also to go with them. If the petitioner No.1 has joined these persons who are themselves responsible and creators of this situation he has also to suffer with them. Otherwise also out of four petitioners, two have been promoted on the basis of seniority and one has been considered for promotion but his case has been kept in sealed cover as some departmental inquiry is pending, the petitioners themselves got the benefit of the seniority list and now they cannot be allowed to resile from this position.

7. Lastly, the petitioners permitted to operate the seniority list for all the years to come and many of the persons senior to them in this list, above whom now they claimed seniority have been promoted to the next higher post and they permitted them to acquire the seniority on the higher post for further promotion. All these persons are not party to this special civil application. Only three persons have been impleaded as party and I have my own reservation possibly those persons would have been promoted. Substantial number of persons have been promoted to the next higher post and in case now the decision is given in this special civil application it will amount to take from them the accrued right which the petitioners themselves have permitted them to acquire.

8. Delay itself may not be a ground for dismissal of the special civil application but in the seniority matter where by this long delay rights are being accrued to other persons who are not party to the special civil application , the petition can be dismissed on this ground. Merely because three persons have been impleaded as party, the petitioners cannot save themselves from the dismissal of the petition on the ground of inordinate delay and laches. These persons also have been impleaded as party after more than 13 years of challenge to the seniority list.

9. Taking into consideration the totality of the facts of this case, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-